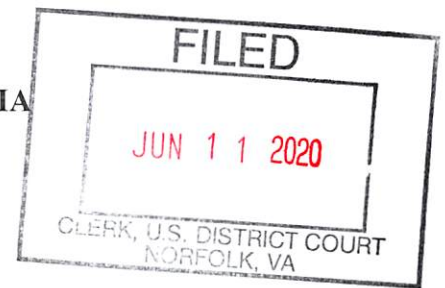


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



HARRY NIE,

Plaintiff,

v.

CIVIL ACTION NO. 2:19cv481

COMMONWEALTH OF VIRGINIA,

Defendant.

FINAL ORDER

On September 13, 2019, pro se Plaintiff Harry Nie filed an independent action styled as a Motion to Vacate pursuant to Federal Rule of Civil Procedure 60(b), with attachments, challenging the court's rulings in three orders issued in his previously-filed Petition for Writ of Habeas Corpus in Civil Action No. 2:11cv666. (ECF No. 1). Nie's motion was also accompanied by a motion for leave to proceed in forma pauperis, which was granted. (ECF Nos. 2, 10). After filing the originating documents, Nie filed an amendment to his motion, including additional exhibits (ECF No. 3) and a request for appointment of counsel (ECF No. 4).

Nie also commenced nearly identical proceedings in the Western District of Virginia, which were transferred to this District and assigned case number 2:19cv619, seeking identical relief on identical grounds.¹

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. Thereafter, Nie filed an objection to

¹ By Order entered November 21, 2019, the court consolidated Nie's identical cases and denied his request for appointment of counsel. (ECF No. 10).

the Referral Order (ECF No. 7), a Motion for Immediate Release (ECF No. 8) and a Motion to Transfer (ECF No. 9), all of which sought recusal of the assigned Magistrate Judge.² The Report and Recommendation filed April 14, 2020 recommends dismissal of Nie's Motion to Vacate. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On May 1, 2020, the court received Plaintiff's Objections to the Report and Recommendation. (ECF No. 30). On May 13, 2020, the court also received a filing from Nie styled "Motion for Judgment as a Matter of Law," which it construed as an additional objection to the Report and Recommendation. (ECF No. 31). The Defendant filed no response to the objections and the time for responding has now expired.

The court, having reviewed the record and examined the objections filed by Plaintiff to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed April 14, 2020. It is, therefore, ORDERED that Defendant's Motion to Dismiss (ECF No. 14) be GRANTED; Plaintiff's Motion to Vacate (ECF No. 1) be DENIED; Plaintiff's Amendment (ECF No. 3) be DISMISSED, Plaintiff's Motions for Immediate Release (ECF No. 8) and Motion to Transfer Case (ECF No. 9) be DENIED and the case be DISMISSED with prejudice.

Finding that the basis for dismissal of Plaintiff's Motion to Vacate is not debatable, and alternatively finding that Plaintiff has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335–38 (2003); Slack v.


² The Order entered November 21, 2019 also denied Nie's request for recusal of the Magistrate Judge. (ECF No. 10). Nie appealed the court's decision to the Fourth Circuit which dismissed his appeal on April 21, 2020.

McDaniel, 529 U.S. 473, 483–85 (2000).

Plaintiff is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Plaintiff intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Plaintiff may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Plaintiff and to provide an electronic copy of the Final Order to counsel of record for Defendant.

Norfolk, Virginia

 June 10, 2020



RAYMOND A. JACKSON
UNITED STATES DISTRICT JUDGE